

REMARKS

This Response is submitted in reply to the Office Action dated December 17, 2004, having a shortened statutory period set to expire March 17, 2005. Claims 1-5, 9-14, 16, 18-23, 25 and 27 are pending. No amendments to the claims have been made.

Claim Rejections – 35 U.S.C. § 103(a)

In section 4 of the present Office Action, Claims 1-5, 7, 9-14, 16, 18-23, 25 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kumar, et al.*, (United States Patent No. 6,356,921 B1) in view of *Youden, et al.* (U.S. Patent No. 5,606,359). That rejection is respectfully traversed and reconsideration of the Claims is requested.

Applicants refer the Examiner to the provisions of 35 U.S.C. § 103(c). As set forth in 35 U.S.C. § 103(c), a patent or other publication is disqualified as a reference in a rejection under 35 U.S.C. § 103(a) if (1) the application was filed after November 29, 1999, (2) the reference is prior art under 35 U.S.C. § 102(e), (f) or (g), (3) the reference was invented by a different inventive entity, and (4) the reference is owned by the same entity as the rejected application.

Applicants submit that the rejection of the pending claims under Section 103 is improper pursuant to the provisions of 35 U.S.C. § 103(c). The present application was filed on December 20, 1999, which is after November 29, 1999, and before the March 1, 2002 issue date of the *Kumar* reference. *Kumar* qualifies as prior art only under Section 102(e) because *Kumar* is a patent granted on an application for a patent by another filed in the United States before the invention by the Applicants. Therefore, the present claims have been rejected in view of 35 U.S.C. § 102(e)/103 prior art.

Further, the present application and the *Kumar* reference were commonly owned or subject to assignment at the time the invention was made (see M.P.E.P. § 706.02(I)(1)). As the Examiner will note by reference to the *Kumar* patent and to the assignment records for the present application, both were commonly owned by International Business Machines Corporation at the time the claimed invention was made. Consequently, pursuant to 35 U.S.C. § 103(c), *Kumar* cannot preclude patentability under Section 103(a), and does not support the

present rejection of the pending claims.

In light of the above, Applicants submit that the present rejection should be withdrawn, and with all other objections and rejections having been overcome, a Notice of Allowance of the claims now pending in the present application is respectfully requested.

Respectfully submitted,



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